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VENTURA SUPERIOR COURT

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Executive Officer and Clerk

BY:  Deputy

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Attorneys for Plaintiffs and Cross-Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA  
and THE PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. EDWIN F. LOWRY, Director,  
California Department of Toxic Substances Control

v.

Plaintiffs,

HALACO ENGINEERING CO., et al:

Defendants.

HALACO ENGINEERING CO.,

Cross-Complainant,

PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PEOPLE OF THE STATE OF  
CALIFORNIA ex rel. EDWIN F. LOWRY, Director,  
California Department of Toxic Substances Control,

Cross-Defendants.

Case No.: CIV 21490

STIPULATION AND FINAL  
JUDGMENT  
(C.C.P. § 664.6)

PERMANENT INJUNCTION AND  
FINAL JUDGMENT PURSUANT  
TO STIPULATION

[PROPOSED] ORDER

1 WHEREAS, Plaintiffs, *the People* of the State of California and the People of the State of  
2 California, *ex rel.* Edwin F. Lowry, director, California Department of Toxic Substances Control  
3 ("DTSC") **have** engaged in settlement negotiations with Defendant, Halaco Engineering  
4 Company, a California Corporation, ("Halaco"). The Plaintiffs and *Halaco* (collectively  
5 "Parties") hereby stipulate and consent to the entry of this Stipulation and Final Judgment, and to  
6 the entry of the Final Judgment and Permanent Injunction and its provisions and requirements,

7 The Parties have jointly entered into this Stipulation and Final Judgment pursuant to a  
8 compromise and settlement of the **unresolved** claims and issues for the purposes of avoiding  
9 further prolonged and complicated litigation and in furtherance of the public interest in  
10 accordance with the provisions of the Stipulation and Final Judgment.

11 By agreeing to this Stipulation and Final Judgment, Halaco does not admit to any  
12 wrongdoing, any violation of statute or regulation, or any conditions alleged in the Complaint.  
13 Plaintiffs and Halaco agree that Plaintiffs' investigation indicated to the Office of the District  
14 Attorney of the County of Ventura and to DTSC that sufficient probable cause existed for the  
15 filing of the complaint in this matter, Plaintiffs and Halaco agree that this Stipulation and Final  
16 Judgment is merely the vehicle by which settlement of this dispute may be enforced by and  
17 between the Parties hereto. This Stipulation and Final Judgment is entered into based in part on  
18 representations made and reaffirmed by Halaco that certain penalty payments will be made  
19 according to the terms of the Stipulation and Final Judgment.

20 By agreeing to this Stipulation and Final Judgment, the Plaintiffs do not admit to any  
21 wrongdoing, any violation of statute or regulation, or any condition alleged in Halaco's cross-  
22 complaint.

23 Upon the consent of the Parties hereto, and it appearing to the court that there is good  
24 cause for the entry of the Stipulation and Final Judgment,

25 **IT IS ORDERED, ADJUDGED AND DECREED, as follows:**

1. The Parties agree that this court has jurisdiction of the subject matter of this action  
and each of the Parties hereto, and shall retain that jurisdiction until all of the requirements of  
this Stipulation and Final Judgment have been fully satisfied. The Parties stipulate to the

2.

1 Superior Court, County of Ventura as **the** venue **of** this action.

2 2. The Parties **all** waive their respective rights to: request reconsideration of the  
3 court's Summary Adjudication ruling; **appeal** from the court's Summary Adjudication ruling;  
4 trial regarding **issues** decided **in Halaco's** Motion to Dismiss, **issues** decided in Plaintiffs'  
5 Motion for Summary Adjudication, or any other issue pertaining **t o** Plaintiffs' complaint; and to  
6 attempt **to** set aside or **vacate**, or otherwise **to attack**, directly **at** collaterally, **the** Stipulation **and**  
7 Final Judgment, any provision contained **therein**, or any order of the court.

8 3. The injunctive provisions of this Stipulation and Final Judgment are applicable to  
9 defendant Halaco Engineering Company, its subsidiaries and divisions, and all **agents**,  
10 employees, representatives **and all persons, partners**, corporations, or other entities when acting  
11 by, through, under, or **on** behalf of defendant (collectively, "Enjoined Parties"), only insofar **as**  
12 **they are** doing business **in the** State **of** California. **The** injunctive provisions of this Stipulation  
13 and **Final** Judgment apply only **to** defendant Halaco's scrap-metal smelting **and** all related  
14 activities **conducted** at and from **6200 Perkins** Road, in the County of Ventura ("Premises"), and  
15 elsewhere **in** the State of California

16 4. Enjoined Parties, **pursuant to California Health and Safety Code § 25184 and**  
17 **California Business and Professions Code § 17203, are** hereby **permanently** enjoined from:

18 a) **Unlawfully** managing or disposing of used oil in violation of Chapter 6.5,  
19 Division 20 **of the** California Health and Safety Code;

20 b) Storing or transporting used oil **in** a container not labeled **as** required by  
21 Title **22**, California **Code** of Regulations, section 66262.34(f);

22 c) Storing or transporting used oil **in** a container **that is** not closed, in poor structural  
23 condition, or without secondary containment, in violation **of** Title **22**, California **Code of**  
24 Regulations sections **66265.171** and 66265.173;

25 d) Storing used oil in a container not **marked** or clearly labeled with **the words**  
26 **"USED OIL," in** violation of Title **22**, California Code of Regulations, section **66279-21**,

27 e) Generating, **transferring** or transporting **used** oil without complying with **all** of the  
28 **provisions** of the HWCL, **in** violation of California Health and Safety Code section 25250.23

1           f)     Employing used oil **as** a fuel by incineration, *or* by burning in any furnace or  
2 other device; **and**

3           g)     Placing used oil generated *at the* Premises into *any* furnace **used** to smelt metal.

4           5.     Halaco shall **pay** to Plaintiffs the total **sum** of ONE HUNDRED FIFTY  
5 THOUSAND DOLLARS (\$150,000.00). **The** sum of \$49,000.00 shall be paid **as** civil penalties  
6 to DTSC, pursuant to Health & Safety Code § 25189(b). The **sum** of \$26,000.00 shall be **paid** to  
7 DTSC **as** reimbursement of DTSC's **costs**. The sum of \$40,000.00 **shall be paid** as civil penalties  
8 to the County of Ventura **pursuant to** Business and Professions Code § 17206. The **sum** of  
9 \$30,000.00 shall be paid to the Consumer and Environmental Fraud Enforcement/Training Fund  
10 of the Office of the Ventura *County* District Attorney **as** reimbursement of the Ventura County  
11 District Attorney's **costs**. The **sum of \$5,000.00 shall** be paid to the Oxnard Fire Department,  
12 CUPA Division, **as** reimbursement of Oxnard Fire Department, **CUPA** Division's **costs**.

13           6.     Payment of the total **sum** of One Hundred Fifty Thousand Dollars (\$150,000.00)  
14 **as required** under paragraph 5, above, **is and shall** be due **and payable** according to *the* following  
15 schedule:

16           (a)     Halaco shall pay the **sum** of **\$50,000.00** within **six** (6) months of the Bankruptcy  
17 **Court's** approval of its **plan** of reorganization presently pending **in** the United **States** Bankruptcy  
18 Court, Central District of California, Northern Division, In re Halaco Engineering, Case Number  
19 ND-02-12255 RR. **Halaco** shall **make** a \$25,000 payment to the County of Ventura **as set** forth  
20 **in paragraph 7 below**. **Halaco** shall **make a** \$25,000 **payment to** DTSC **as set** forth in **paragraph 7**  
**below**.

(b)     **Halaco shall pay the sum** of \$50,000.00 **within** eighteen (18) months of the  
**Bankruptcy Court's** approval *of its plan* of reorganization **presently** pending in the United States  
**Bankruptcy Court**, Central District of California, Northern Division, In re Halaco Engineering,  
~~Case~~ Number ~~ND-02-12255~~ RR, Halaco **shall** make a \$25,000 payment to the County of  
Ventura **as set** forth in paragraph 7 below. **Halaco** shall make a \$25,000 payment to **DTSC** **as set**  
forth in **paragraph 7** below.

(c)     Halaco **shall pay** the **sum** of \$50,000.00 within thirty (30) months of *the*

1 **Bankruptcy** Court's approval of its **plan of reorganization** presently pending in the United States  
2 **Bankruptcy** Court, **Central** District of California, Northern **Division**, In re Halaco Engineering  
3 **Case** Number **ND-02-1225RR**. Halaco shall make a \$25,000 payment to the County of  
4 Ventura ~~as set~~ forth in **paragraph** 7 below. Halaco shall make a \$25,000 payment to DTSC ~~as~~ set  
5 forth in **paragraph** 7 below.

6 7. Payments

7 (a) All payments made to the DTSC pursuant to this Final Judgment shall be by  
8 check, made payable to the California Department of Toxic Substances Control, and shall be  
9 mailed to: Department of Toxic Substances Control, Accounting Office, P.O. Box 806  
10 Sacramento, CA 95812-0806 Each check shall bear on its face the case name and docket  
11 number of this case. A photocopy of all checks and payments made pursuant to this Stipulation  
12 and Final Judgment shall be sent, at the same time, to Deputy Attorney General G. Lynn Thorpe,  
13 Office of the Attorney General, 1300 "I" Street, Suite 1101, P.O. Box 944255, Sacramento, CA  
14 94244-2550.

15 (b) All payments made to the County of Ventura shall be made by check and made  
16 payable to the "County of Ventura" and delivered to the Ventura County District Attorney's  
17 Office, Fraud Unit, 4245 Market Street, Suite 205, Ventura, CA 93003, Attention: Senior  
18 Deputy District Attorney Mitchell Disney. The Ventura County District Attorney's Office shall  
distribute the payments as provided in paragraph 5, above.

8. Halaco consents to provide access to its facility, equipment and business premises  
at all reasonable times to employees, contractors, and consultants of DTSC, the Oxnard Fire  
Department, CUPA Division and Ventura County for the purposes of monitoring Halaco's  
compliance with the provisions of this Stipulation and Final Judgment. Defendant shall permit  
such persons to inspect and copy all records, documents, and other writings, including all  
sampling and monitoring data, in any way pertaining to work undertaken pursuant to this  
Stipulation and Final Judgment. Nothing in this Stipulation and Final Judgment is intended to  
limit in any way the right of entry or inspection that DTSC, Oxnard Fire Department, CUPA  
Division, Ventura County or any agency may otherwise have by operation of any law.



1           9.       Halaco's cross-complaint in this matter is **dismissed with** prejudice.

2           10.       Halaco hereby releases DTSC, the Office of the Attorney General, the County of  
3 Ventura, the City ~~of~~ Oxnard, **and** their employees, representatives and agents from **any and all**  
4 liability, in their official or personal capacity, **arising** from or relating to **this** litigation or any  
5 inspection(s) that led to it. Defendant further covenants **not to sue, and not to pursue or assert**  
6 any **claims** or causes of action against DTSC, the Office of ~~the~~ Attorney General, ~~the~~ County of  
7 Ventura ~~the~~ City of Oxnard, or their employees, representatives or agents **in** their official or  
8 personal **capacities** arising from or **relating to this** litigation or **any** inspection(s) **that** led to it.

9           11       Except as expressly **provided** in **this** Stipulation and Final Judgment, nothing **in**  
10 **this** Stipulation and Final Judgment **is** intended nor **shall** it be construed to preclude any  
11 government agency, department, board or entity from exercising **its** authority under any law,  
12 **statute or** regulation. **Except as expressly provide** herein, nothing in this Stipulation and Final  
13 Judgment shall constitute or be construed **as** a satisfaction or **release** from liability for **any**  
14 conditions or claims **arising as a result** of past, ~~current~~ or future activities of Defendant.

15           12.       In the event that Halaco fails to comply with the **provisions of this** Stipulation and  
16 **Final** Judgment, including but not limited to making timely **payments as** required by **this**  
17 **Stipulation and Final** Judgment, Plaintiffs may proceed to **pursue all** rights and remedies to  
18 **enforce the Stipulation and Final** Judgment against **Halaco** in this matter.

19           13.       Halaco **agrees to amend its** plan of reorganization *in* the United **States** Bankruptcy  
20 Court, Central District of California, Northern Division, In re Halaco Engineering, Case Number  
21 **ND-02-12255 RR**, to **pay** Plaintiffs' claims **in full as set forth in** this Stipulation and Final  
22 Judgment. The payments to Plaintiffs **as set forth in paragraphs 5, 6 and 7** above **are** conditioned  
23 upon **approval by** the Bankruptcy Court of Halaco's **plan** of reorganization ("Plan Approval").  
24 **Plaintiffs** will notify this Court **upon** Plan Approval. If the Bankruptcy Court **fails to** approve a  
25 **plan** of reorganization consistent **with this** Stipulation and Final Judgment **including**, but not  
26 **limited to**, payments to Plaintiffs **as set forth in this Stipulation and Final Judgment**, the Parties  
27 retain **all** their **respective** rights, remedies **and** defenses.

28           14.       Each signatory to **this** Stipulation **and Final** Judgment certifies that **he or she is**

fully authorized by the party he or she represents to enter into **this** Stipulation and Final Judgment, to execute it on behalf of the party represented and legally to bind that party.

15. This Stipulation and Final Judgment constitutes the entire agreement between the Parties regarding the matters specifically covered herein. This Stipulation and Final Judgment may not be **amended** or supplemented except **as** provided for herein. The Parties acknowledge that there are no representations, agreements or understandings relating to this Stipulation and Final Judgment other than those expressly contained herein.

16. This Stipulation and Final Judgment may only be amended pursuant to a written agreement **signed** by **all** Parties to the Stipulation and Final Judgment and upon written **approval** of this court.

17. This Stipulation and Final Judgment **may** be executed in **several** counterpart originals, all of which **taken** together **shall** constitute **an** integrated document.

18. The Effective Date of **this** Stipulation and Final Judgment **is** the date **that** Final Judgment is entered by the Court.

**IT IS SO STIPULATED:**

**FOR THE PLAINTIFFS**

**Dated:**

*April 15, 2004*

*Mary Locke*

MARY LOCKE, Chief Investigator  
California Department of Toxic Substances Control

**Dated:** *April 14, 2004*

GREGORY D. TOTTEN, District Attorney  
County of Ventura

*Mitchell F. Disney*

MITCHELL F. DISNEY  
Senior Deputy District Attorney  
Attorneys for Plaintiff and Cross-Defendant  
The People of the State of California

**FOR THE SETTLING DEFENDANT:**

Dated:

JOHN DAVID GAELE  
General Manager and Corporate Secretary  
Halaco Engineering Company

**Approved as to Form:**

Dated:

BILL LOCKYER, Attorney General  
of the State of California  
THEODORA P. BERGER  
Senior Assistant Attorney General  
G. LYNN THORPE  
BRETT J. MORRIS  
Deputy Attorneys General

4/14/04

G. LYNN THORPE  
Deputy Attorney General  
Attorneys for Plaintiff and Cross-Defendant  
People of the State of California ex rel.  
Edwin F. Lowry, Director, California Department of  
Toxic Substances control

MITCHELL SXLBERBERG & KNUPP LLP

Dated: 4/15/2004

ARTHUR FINE  
Attorney for Defendant and Cross-Plaintiff  
Halaco Engineering Company

**IT IS SO ORDERED,**


Dated: \_\_\_\_\_

THE HONORABLE VINCENT J. O'NEILL, JR.  
JUDGE OF THE SUPERIOR COURT



1 **FOR THE SETTLING DEFENDANT:**

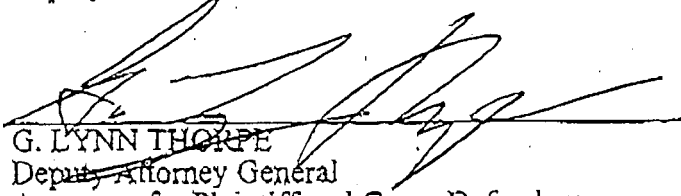
2 Dated:

  
\_\_\_\_\_  
JOHN DAVID GABLE  
General Manager and Corporate Secretary  
Halaco Engineering Company

5 **Approved as to Form:**

6 Dated:

BILL LOCKYER, Attorney General  
of the State of California  
THEODORA P. BERGER  
Senior Assistant Attorney General  
G. LYNN THORPE  
BRETT J. MORRIS  
Deputy Attorneys General

  
\_\_\_\_\_  
G. LYNN THORPE  
Deputy Attorney General  
Attorneys for Plaintiff and Cross-Defendant  
People of the State of California, ex rel.  
Edwin F. Lowry, Director, California Department of  
Toxic Substances Control

MITCHELL SILBERBERG & KNUPP LLP

18 Dated:

\_\_\_\_\_  
ARTHUR FINE  
Attorney for Defendant and Cross-Plaintiff  
Halaco Engineering Company

2; **IT IS SO ORDERED,**

2:

1114 Dated: 4- 4-29-04

  
\_\_\_\_\_  
THE HONORABLE VINCENT J. O'NEILL, JR.  
JUDGE OF THE SUPERIOR COURT